

**FEDERAL TRANSIT ADMINISTRATION
OUTSTANDING ACHIEVEMENT AWARD
for
EXCELLENCE IN ENVIRONMENTAL DOCUMENT PREPARATION**

The statement has become a boon for consultants who churn them out according to formulas as if they were SUVs on an assembly line. The environmental impact statement report for major projects like the Hudson Yards Plan is about as understandable to the lay person as a doctoral dissertation on civil engineering. Read on and you'll wonder whether the loss of trees to produce all that paper is worth the environmental benefit of the report. Many people who deal with the environmental impact statement—including community activists, planners and developers—recognize that after three decades it is time to review environmental review.

Angotti, "Rethinking Environmental Impact Statements,"
Gotham Gazette (July 2004), available at
<http://www.gothamgazette.com/article//20040720/12/1042>

What is this initiative about?

There is a growing awareness among the public, as well as legislators and the bureaucracy at all levels of government, that environmental impact statements, which have grown over the years to become bloated, non-analytical documents often exceeding 1,000 pages in length, are no longer serving their intended purpose. As a consequence, some agencies, including the Federal Transit Administration (FTA), are re-examining their guidance and practices with a view toward dramatically improving the quality of environmental documentation. The fundamental purposes and principles of efficient, effective Federal impact statement preparation, set forth in regulations implementing the National Environmental Policy Act (NEPA) and related guidance, have been in place for nearly three decades.¹

¹ In a 1977 executive order, the Council on Environmental Quality was directed to issue regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA). The NEPA implementing regulations were to "be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses." Executive Order 11991 of May 24, 1977.

The NEPA implementing regulations establish reasonable quantitative and qualitative targets for environmental document preparation. In addition to specifying a standard format of study topics, the regulations also provide that the text of environmental impact statements should normally be less than 150 pages. Qualitatively, the regulations call for preparation of “analytic rather than encyclopedic” documents. The regulations stress the need for environmental impact statements to focus on important issues and alternatives—considerations that are truly useful to decisionmakers and the public—and to reduce sharply the emphasis on background material and insignificant issues; to achieve these objectives, a system of simplifying procedural techniques that may be readily employed by any agency was incorporated into the regulations.

But for all the apparent compliance by Federal agencies with the regulations, NEPA documents have tended to remain exceptionally long on pointless “detail,” as well as a continual source of delays in the administrative process. To illustrate the point, a recent Council on Environmental Quality NEPA Task Force Report acknowledged that contemporary environmental impact statements can contain more than 2,000 pages, require more than six years to complete, and cost \$2 million to prepare.² There are many sources of present-day disharmony between impact statements and the regulations, including fear of litigation that often leads document preparers and reviewers to address in detail every conceivable environmental issue, irrespective of significance, as well as many issues unrelated to environmental quality. Regardless, it is clear, as one former chairman of the Council on Environmental Quality observed, that achieving NEPA's full potential “will not require lengthier documents containing greater detail or a more protracted process; quite the contrary.”³

² As an extreme example, the Department of Energy's final environmental impact statement for the superconducting supercollider project, years in the making—not 12 months, as the Council on Environmental Quality suggests—and later supplemented, was about 8,000 pages in length. The 26 pound, multivolume document was mailed during the holiday season of 1988 and included addressees who had not even requested copies. Just to print and mail the document cost approximately \$1.4 million. U.S. General Accounting Office, *Information Dissemination: Cost of Mailing Environmental Impact Statement for Super Collider* No. GAO/GGD-89-104 (July 1989).

³ Council on Environmental Quality, *Summary of the Proceedings of a Workshop on NEPA Integration: Effective, Efficient Environmental Compliance in the 1990s* i (Remarks of Chairman Michael R. Deland, December 1991).

The impact statement was required to force the agencies to take the substantive provisions of the Act seriously, and to consider the environmental policy directives of the Congress in the formulation of agency plans and procedures. To the extent that agencies have built the criteria specified in section 101 into their assumptions and policies and have utilized the planning procedures indicated in section 102(2)(A) and (B), the impact statement need be no more than a summary of agency action. Acknowledging exceptions, it may be generalized that impact statements of great length and detail indicate programs or projects of dubious environmental merit.

Lynton K. Caldwell, Special Assistant
to the Senate Committee on Interior
and Insular Affairs on the drafting of
NEPA

Environmental impact statements are not the only NEPA documents that suffer excesses; environmental assessments are similarly burdened. The NEPA implementing regulations state that an environmental assessment is supposed to be a "concise public document" that serves to "[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (emphasis supplied). According to the Council on Environmental Quality, environmental assessments should generally be no more than 10 to 15 pages in length and take no longer than three months to prepare. Yet, the Council on Environmental Quality NEPA Task Force Report confirmed that so-called "large environmental assessments" may contain more than 200 pages, require up to 18 months to complete, and cost \$200 thousand to prepare. In most respects, contemporary environmental assessments resemble what environmental impact statements are supposed to look like, according to the NEPA implementing regulations.

CEQ regulations are usually not the cause of EA delays and additional cost. Instead, compliance with an agency's internal NEPA or other environmental guidance requires additional time and expense.

* * *

Few agencies take the minimum approach described in existing CEQ regulations; instead they produce EAs that are much longer than suggested. Some agencies that the task force interviewed and public comments received stated that EAs are similar to EISs in size, cost, and scope.

The NEPA Task Force Report to the Council
on Environmental Quality, "Modernizing
NEPA Implementation" 66 (September 2003)

In an effort to return to the fundamentals of efficient environmental document preparation, the Federal Transit Administration (FTA) has taken several steps, including redesigning its "Managing the Environmental Process" course, offered through the National Transit Institute, to emphasize sound document-preparation practices. FTA has also updated relevant guidance, including sample documents, on various aspects of impact statement preparation. The award contemplated in this announcement represents yet another way in which FTA hopes to encourage efficient preparation of more useful environmental documentation.

A number of other agencies have undertaken similar initiatives. The Federal Highway Administration has also issued valuable guidance on document preparation; that guidance may be accessed at

http://www.environment.transportation.org/pdf/IQED-1_for_CEE.pdf

I believe the original intent of the law has been lost. Agencies routinely produce enormous and convoluted documents. In most cases, the amount of complex data makes the document so confusing that it can't even be read and understood. This undermines the intent of having a document the general public can read, understand and provide meaningful feedback on. NEPA is not supposed to be a process by which every blade of grass is micromanaged on the ground.

Statement of Eric G. La Price, submitted to the Task Force on Improving the National Environmental Policy Act and the Task Force on Updating the National Environmental Policy Act of the House Committee on Resources, available at <http://resourcescommittee.house.gov/nepataskforce.htm>

Is there a new paradigm?

There is no new paradigm. The regulations and guidance currently in place are sufficient, if followed, to achieve the executive order's objectives—to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives.

What are the major impact statement preparation problems?

Scoping helps insure that real problems are identified early and properly studied; that issues that are of no concern do not consume time and effort; that the draft statement when first made public is balanced and thorough; and that the delays occasioned by re-doing an inadequate draft are avoided.

President's Council on Environmental Quality

Impact statement preparation problems arise principally as a result of deficiencies in the "scoping" process. NEPA "scoping" (40 C.F.R. § 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on environmental impacts of consequence.

A deficient scoping process will almost always lead to document preparation problems, including reinforcing a tendency on the part of document preparers to add needlessly to the length of documents and to confuse readers by

- addressing every conceivable area of impact that could be associated with projects whether or not involved in the project under study; if an environmental value—historic resources, for example—is not involved, then there is no need to develop (basically target and explain away) the issue in the context of the document;
- developing exhaustively every aspect of every negative impact that may be generated by the proposed action in an effort to satisfy the requirement that impact statements identify “adverse” environmental effects which cannot be avoided should the proposed action be implemented; impacts to the quality of the human environment deemed not to be significant, but are sufficiently adverse to warrant attention and are not otherwise mitigated, may be noted (projects may also generate environmental benefits which should be highlighted, as well—an impact statement should draw attention to positive impacts, not just negative impacts);
- burdening impact statements with a considerable amount of extraneous descriptive language; and
- duplicating discussions in different sections of impact statements.

Some other generally unobserved requirements and considerations that contribute to a much less useful impact statement are highlighted below.

The NEPA implementing regulations require that environmental impact statements “be written in plain language.” The regulations also encourage the use of “appropriate graphics.” Agencies are expected to employ writers of clear prose, which is extremely important if documents are going to be meaningful to decisionmakers and the public.

In relating impacts of consequence, document preparers often use highly technical and scientific terminology, including equations and symbols that the public cannot comprehend. Results of technical analyses should be related to the public in understandable terms. For example, document preparers should not explain noise levels in terms of dBA, L_{dn} , and L_{eq} ; rather noise levels should be related in terms of an event with which the public may be familiar, such as standing 10 feet from an idling gasoline-powered lawn mower.

It is important to note methodologies employed in arriving at conclusions involving scientific inquiries. But discussion of methodologies and technical terminology should be relegated to an appendix of the document.

Acronyms are the language of the bureaucracy and abound in the transit business. But acronyms are like a foreign language to the public; documents that contain a wealth of acronyms tend to discourage readers who are forced constantly to refer back to glossaries

of terms in order to understand the writing. Document preparers should be considerate of readers and avoid excessive use of acronyms in NEPA documents.

For the most part the NEPA implementing regulations and guidance are directed at the environmental impact statement process, not the environmental assessment process. But the same principles that are followed to reduce paperwork and delay in the environmental impact statement process apply equally to the environmental assessment process. The Council on Environmental Quality has published guidance on environmental assessment preparation; that guidance is available at

http://ceq.eh.doe.gov/nepa/regs/guidance_for_environmental_assessments.pdf

Why recognize outstanding achievement in document preparation?

As long as the basic requirements of the NEPA process are observed, there is no penalty for preparing bloated, non-analytical impact statements that the public and decisionmakers can understand, if at all, only with great difficulty. And poorly written impact statements are seldom singled out for criticism, although courts have on occasion remanded documents in part for failure to be written in plain language. Nevertheless, as the Council on Environmental Quality observed more than a decade ago, “There is need for more readable NEPA documents.”⁴

There are few disincentives for preparing environmental documents that do not serve their intended purpose. But disincentives are not always the most effective means of achieving a desired result. Environmental documents that comport with document preparation expectations and achieve the objective of paperwork reduction deserve more than passing reference; they should be formally recognized and showcased as examples of effective, efficient environmental documentation. Suitable recognition will enhance the reputations of sponsors and consultants who are so recognized and will serve to encourage others to follow suit, all to the benefit of the public and agency decisionmakers. It is for these reasons that the Federal Transit Administration is establishing an outstanding achievement award for excellence in environmental document preparation.

What are the award criteria and filing requirements?

Submissions—environmental impact statements and environmental assessments—will be evaluated based on three criteria, each having equal value for judging purposes:

(1) Content—does the document satisfy the content requirements of the NEPA implementing regulations and relevant guidance?

⁴ Council on Environmental Quality, *Summary of the Proceedings of a Workshop on NEPA Integration: Effective, Efficient Environmental Compliance in the 1990s* 8 (December 1991).

(2) Utility—has the document been designed to be truly useful to the public and decisionmakers?

(3) Practicality—have procedural techniques to reduce paperwork and delay (see 40 C.F.R. §§ 1500.4 and 1500.5, appended to this document) been effectively employed?

Documents, limited to one—whether an environmental impact statement (draft or final) or an environmental assessment—annually for any sponsor, should be submitted, together with a cover letter explaining how and the extent to which each criterion was met for the document, to the planning director of the region in which the sponsor is located for initial screening. Following initial screening, documents will be forwarded to headquarters for judging.

The filing deadline for documents and accompanying explanations (to the regional planning director) is

Who will judge entries?

Entries will be judged by a panel of experts comprised of representatives, as available, from among the following organizations:

Federal Transit Administration, Office of Planning and Environment

The President's Council on Environmental Quality or the United States Environmental Protection Agency

The United States Department of the Interior

The Environmental Law Institute

The American Public Transportation Association

The American Association of State Highway and Transportation Officials Center for Environmental Excellence

A university student of urban planning

With whom may I speak if I have questions or need additional information?

Questions and requests for additional information should be directed to

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